Court No. 2

Civil Misc. Writ Petition No. 2382 (M/S) 2001.

Abdul Hafiz ……..…… Petitioner.

Versus

Rent Control and Eviction Officer,
Puri Garhwal and another. ……. Respondents.

…….

**Hon'ble P.C.Verma, J.**

This Writ petition has been by the petitioner challenging the order dated 04.11.2000 passed by the Rent Control and Eviction Officer, Pauri Garhwal rejecting the application for restoration moved by the petitioner. The petitioner earlier intimated the Rent Control and Eviction Officer for declaring the accommodation deemed vacant under Section 12 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred as the Act). This was registered as Miscellaneous Case No. 26 of 1995, which was dismissed in default on 20.8.1997. On 26.8.1997 an application for restoration was moved. The case was restored on 27.6.1998 to its original number and the proceedings for disposal of the case started. On 22.7.1998 an objection was filed by the respondent no. 2 that the provisions of Civil Procedure Code are not attracted and this is not a case covered under Rule 22 of the Rules framed under the Act. Therefore, restoration application was misconceived and the order passed on the restoration application registering the case was without jurisdiction. Considering the provisions of Rule 22 (b) of the Act the Rent Control and Eviction Officer held that in the facts and circumstances of the present case, the provision of Rule 22 of the Rules framed under the Act was not attracted.

The nature of proceedings under Section 12 of the Act does not warrant for decision of a lis. The contingencies under which the deemed

vacancy is to be declared are provided under Section 12 of the Act itself. The deemed vacancy is declared on the happening of the events contemplated under Section 12 of the Act. Therefore, the landlord has no right to participate and contest the proceedings until and unless there is an application for release of the accommodation on record. There is no application for release of the accommodation. Therefore, the provision of Rule 22 (b) of the Rules framed under the Act is not attracted.

The learned counsel for the petitioner relied on Rule 22 (a) of the Rules framed under the Act. According to him, he has moved application under Rule 9 read with Section 15 of the Act. Provision of Rule 9 read with Section 15 of the Rules framed under the Act is not attracted in case of deemed vacancy; it is attracted in case of a regular vacancy. Provisions of Section 12 and Section 15 of the Act operate differently and not interlinked at all. Under Section 12 of the Act the Rent Control and Eviction Officer has to declare deemed vacancy if the contingencies contemplated are fulfilled. Therefore, the view taken by the Rent Control and Eviction Officer does not suffer from any illegality or miscarriage of justice. Thus, no interference is called for. However, if at present the contingencies exist, if is open for the Rent Control and Eviction Officer to pass appropriate order under Section 12 of the Act afresh.

The petition is disposed of accordingly.

(**P.C.Verma,J. )**

02.7.2002
P. Singh